IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.1477 of 2007

Mr.Sunil Ramji Singh Petitioner
Vs.
Bharat Transport Service & anr. Respondents

Mr.S.V.Kotwal for petitioner.
Mr.A.S.Shitole, APP for State.

CORAM: B.H.MARLAPALLE, J.

August 13, 2007.

P.C.

. Heard Mr.Kotwal, the learned counsel for the petitioner. An application was made before the trial Court in Complaint bearing No. 472/S/2002 for referring the dishonoured cheque to a handwriting expert. The application was allowed and the cheque at Exhibit C/3 was referred to the handwriting expert. His opinion was received by the trial Court and it appears that he could not ascertain about the signature. A second application was made by the accused to refer the cheque once again to the handwriting expert and purportedly on the ground that some more details which were required by the handwriting expert could be provided by the accused. This application was rejected and ultimately the complaint was decided against the accused. The trial Court's order of conviction has been challenged in

Appeal No.28 of 2006 and while the same was pending, an application purportedly under Section 391 of Cr.P.C. came to be filed and registered as Misc. Application No.363 of 2006. For the very same purpose this application has been rejected by the lower Appellate Court on 30/5/2007 and hence this writ petition.

. The lower Appellate Court held that the cheque was dishonoured (a) on the ground of "insufficient funds" and not on the ground of disputed signature, (b) cheque was exhibited and (c) similar application was moved before the trial Court and it was rejected. Once the document was exhibited after the same was referred to the handwriting expert and the reason for dishonour of cheque was clear in the Bank's advice memo, there was no reason for the appellant to invoke the provisions of Section 391 of Cr.P.C. by filing a fresh application when similar prayer was rejected during the trial and in a case filed under Section 138 of the Negotiable Instruments Act, 1881. The parameters of proof are set out in the said Section and the burden is required to be discharged by the complainant. It is also clear that to the legal notice no reply was given purportedly on the ground

that the notice was not received. Such a defence before the trial Court has also been rejected.

. In the totality of these circumstances, the view taken by the lower Appellate Court cannot be termed as perverse or grossly erroneous so as to call for interference under Article 227 of the Constitution.

. Petition is rejected summarily. This order will not come in the way of the Appellate Court in deciding the appeal on its own merits.

(B.H.MARL